

14-397-cv
Stanislav Levin v. Credit Suisse Inc., et al.

MANDATE

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 5th day of September, two thousand fourteen.

PRESENT: JOHN M. WALKER, JR.,
RICHARD C. WESLEY,
Circuit Judges,
JOHN F. KEENAN,
*District Judge.**

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STANISLAV LEVIN,
Plaintiff-Appellant,

-v.-

No. 14-397-cv

CREDIT SUISSE INC., METROPOLITAN
LIFE INSURANCE COMPANY, AON
HEWITT, INC.,

Defendants-Appellees.

* The Honorable John F. Keenan, of the United States District Court for the Southern District of New York, sitting by designation.

For Appellant: HARRIETTE N. BOXER, New York, NY.

For Appellee Credit
Suisse Inc. and AON
Hewitt, Inc.: MELISSA D. HILL (Ira G. Rosenstein, *on the brief*),
Morgan, Lewis & Bockius LLP, New York, NY.

For Appellee
Metropolitan Life
Insurance Company: MICHAEL H. BERNSTEIN (Matthew P. Mazzola, *on the
brief*), Sedgwick LLP, New York, NY.

Appeal from the United States District Court for the Southern District of New York (Richard J. Sullivan, *Judge*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED,

ADJUDGED AND DECREED that the judgment is **AFFIRMED**.

Stanislav Levin (“Levin”) appeals from two orders of the United States District Court for the Southern District of New York (Richard J. Sullivan, *Judge*), dated February 3, 2014, denying Levin’s motion for reconsideration and denying Levin’s motion seeking leave to amend the complaint. Prior to ruling on these motions, on March 19, 2013, the district court granted Defendants-Appellees’ motions to dismiss the entirety of Levin’s Second Amended Complaint (“SAC”), which alleges various violations of the Employee Retirement Income Security Act (“ERISA”), 29 U.S.C. § 1002 *et seq.*, arising out of Metropolitan Life Insurance Co.’s (“MetLife”) denial of Levin’s application for long-term disability benefits.

The district court dismissed Levin's claim on two alternative grounds: (1) Levin failed to plead detrimental reliance, and (2) Levin sought remedies that were unavailable under ERISA. Levin does not appeal the underlying order of dismissal.

We review the denial of a motion to reconsider for abuse of discretion. *Analytical Surveys, Inc. v. Tonga Partners, L.P.*, 684 F.3d 36, 52 (2d. Cir. 2012). A court abuses its discretion when its decision rests on a legal error or a clearly erroneous factual finding, or when its decision does not fall within the range of permissible decisions. *RJE Corp. v. Northville Indus. Corp.*, 329 F.3d 310, 316 (2d Cir. 2003). Here, the district court did not abuse its discretion in finding that Levin did not satisfy the standard for reconsideration because all of his arguments for reconsideration were directed only to the first basis for the district court's dismissal of his complaint. We affirm the denial of Levin's motion for reconsideration because the court was well within its discretion to find that the motion to dismiss should stand on the alternative and independent basis that Levin sought remedies that were unavailable under ERISA, a ground that Levin did not challenge in his motion for reconsideration.

We review the denial of a motion seeking leave to amend for abuse of discretion. *City of N.Y. v. Grp. Health Inc.*, 649 F.3d 151, 156-57 (2d. Cir 2011). The district court denied Levin's leave to amend on the grounds that Levin already had three opportunities to adequately plead his case, that he received letters from Defendants-Appellees explaining the deficiencies in his SAC and nonetheless chose to stand on his pleadings, and that Levin's delay in seeking to replead until after Defendants had fully briefed their motions and the district court had rendered its decision prejudiced Defendants-Appellees. We affirm the denial of Levin's motion for leave to amend for substantially the reasons stated in Judge Sullivan's thorough and well-reasoned order.

We have considered Levin's remaining arguments and find them to be without merit. For the reasons stated above, the judgment of the district court is

AFFIRMED.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk


Catherine O'Hagan Wolfe



A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit


Catherine O'Hagan Wolfe

